

Gulf Coast Ecosystem Restoration Council
New Orleans, LA 70130



MEMORANDUM

FROM: Ben Scaggs 
Acting Executive Director

TO: Scott Pruitt
Administrator, U.S. Environmental Protection Agency (EPA)
Chairperson, Gulf Coast Ecosystem Restoration Council (Council)

DATE: March 26, 2018

SUBJECT: Recommendation for Approval of Florida Stand-Up State Expenditure Plan

Pursuant to the Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economies of the Gulf Coast States Act of 2012, 33 U.S.C. §1321(t) (RESTORE Act), the attached Florida Stand-Up State Expenditure Plan (SEP) requires approval or disapproval by the Chairperson of the Council within sixty days after receipt. This sixty-day review period officially began on March 2, 2018; the statutory deadline for Chairperson approval or disapproval is April 30, 2018.

According to the Council's SEP Guidelines, Council staff is required to review the proposed Stand-Up SEP and make a recommendation to the Chairperson on whether to approve or disapprove it based on the requirements of the RESTORE Act, the Department of the Treasury's implementing regulations and the Council's SEP Guidelines.

I have reviewed the Stand-Up SEP and find that it is complete and meets all applicable requirements. I therefore recommend that Scott Pruitt, Chairperson of the Council, approve the Stand-Up SEP on behalf of the Council. A more detailed explanation of this recommendation is provided below. If the Chairperson agrees with this recommendation and approves the Stand-Up SEP, the attached response letter has been prepared for the Chairperson's signature.

The attached letter would constitute the Chairperson's affirmative vote to approve the Stand-Up SEP. Pursuant to section 4.3.3 of the Council's Standard Operating Procedures, Council staff will post on the Council's website all deliberative materials (including this memorandum) at least seven days before formal Council approval of the Stand-Up SEP.

BACKGROUND

The RESTORE Act established the Council as an independent federal entity. Among other duties, the Council is tasked with administering the Spill Impact Component of the RESTORE Act, under which thirty percent of the funds in the Gulf Coast Restoration Trust Fund (Trust Fund) are disbursed to the five Gulf Coast States based on an allocation formula established by the Council by regulation, based on criteria in the RESTORE Act. In order for Spill Impact Component funds to be disbursed to a State or their administrative agent, the RESTORE Act requires each State to develop a SEP and submit it to the Chairperson for approval.

Under the RESTORE Act, the Council itself has no role in the creation of SEPs or the design or selection of SEP activities; these actions are undertaken solely by the State members. The RESTORE Act specifies four criteria that SEPs must meet in order to be eligible for funding under the Spill Impact Component, and when a SEP meets these criteria (and otherwise complies with the RESTORE Act and Treasury regulations) the Council has no authority or discretion to reject a SEP, to select or designate alternative versions of a SEP, or to select or designate alternative activities within a SEP. Although the Council must determine whether a SEP has met these statutory criteria, the RESTORE Act does not grant the Council discretion to separately consider external factors, such as environmental impacts, in its statutory review.

In March 2016, the Council updated its SEP Guidelines, which describe the required elements of a SEP, the process for submitting a SEP and the standards by which the Chairperson will evaluate a SEP. The SEP Guidelines set forth the elements required in a SEP to ensure compliance with the RESTORE Act and applicable Department of the Treasury regulations. The SEP Guidelines reiterate the four statutory criteria that all SEPs must meet:

1. Each activity in the SEP must be eligible for funding under the RESTORE Act.
2. The SEP must contribute to the overall economic and ecological recovery of the Gulf Coast.
3. The SEP must take into consideration the Council's Comprehensive Plan and be consistent with the goals and objectives of the Comprehensive Plan.
4. No more than 25% of the funding made available in a SEP may be used for infrastructure projects under eligible activities 6 and 7 (i.e., coastal flood protection, port and other infrastructure projects) unless a waiver is provided as described in the RESTORE Act.

The Council staff review found that the Florida Stand-Up SEP meets all four of the required criteria. The review also found that it was complete and met all of the other requirements set forth in the SEP Guidelines. These requirements include descriptions of the financial controls and other financial integrity mechanisms that will be used, a description of the process used for preventing conflicts of interest in the development and implementation of the Stand-Up SEP, project-specific information, a certification that all activities in the Stand-Up SEP comply with RESTORE Act requirements, and

Memorandum to Chairperson

Re: Recommendation for Approval of Florida Stand-Up State Expenditure Plan

March 26, 2017

Page 3

information regarding the public participation process used in developing the Stand-Up SEP.

Pursuant to the SEP Guidelines, all Council members were given twenty days to review the Stand-Up SEP for completeness and consistency with the four statutory criteria described above. Council members were to provide any comments they might have in that regard to Council staff, which in turn would provide them to the Chairperson for his/her consideration in the approval or disapproval of the Stand-Up SEP. Council staff received comments and questions from EPA relevant to the Stand-Up SEP. These comments have been addressed with EPA; no changes to the Stand-Up SEP document were needed. No other Council member provided comments on the Florida Stand-Up SEP.

The Florida Stand-Up SEP, if approved, would provide \$221,038 in Spill Impact Component funding to support coastal restoration activities. Specifically, these funds would be used for planning assistance activities to enable the Gulf Consortium to provide the financial and managerial structure necessary for implementation of projects included in the Florida SEP. The four primary elements of the administrative structure to be developed include: 1) grant management, 2) procurement and contract management, 3) accounting and finance, and 4) technical oversight of deliverables under contracts and grant sub-awards. This financial and managerial structure will be developed by the Gulf Consortium, the designated entity responsible for the development of the Florida SEP.

Once the SEP is approved, funding for the single project, composed of planning activities, in the Stand-Up SEP will be disbursed to the Gulf Consortium via a federal grant. As part of the grant process, all activities for which funding is sought will be carefully reviewed to ensure consistency with the approved SEP and compliance with the RESTORE Act and all other applicable requirements. Funding for the planning activities in the Stand-Up SEP will be awarded after verification of a direct relationship to the Spill Impact Component.

In summary, Florida's proposed Stand-Up SEP complies with all of the applicable requirements set forth in the RESTORE Act, Treasury regulations and SEP Guidelines. If approved by the Chairperson, we look forward to working with the Gulf Consortium to help ensure an efficient grant process for the activities included in the Stand-Up SEP.

Thank you in advance for your review of this matter. Please do not hesitate to let me know if you have any questions or would like to discuss this matter further. Technical questions regarding the Stand-Up SEP can be directed to John Ettinger of Council staff at (504) 444-3522 or at john.ettinger@restorethegulf.gov.

ATTACHMENTS

1. Florida Stand-Up State Expenditure Plan
2. Draft Letter Approving Florida's Stand-Up State Expenditure Plan